

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

STATE ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
)	
Plaintiff,)	
)	
vs.)	
)	
NEXTEL WEST CORP.)	
Serve: CSC-Lawyers Inc. Service Co.)	
221 Bolivar Street)	
Jefferson City, Missouri 65101)	Case No:
)	
and)	Division:
)	
SPRINT SPECTRUM L.P.)	
Serve: Prentice Hall Corp. System)	
221 Bolivar Street)	
Jefferson City, Missouri 65101)	
)	
)	
Defendants.)	

PETITION FOR INJUNCTION AND OTHER RELIEF

Plaintiff, the Attorney General of the State of Missouri, Jeremiah W. (Jay) Nixon,
in his official capacity, by his Assistant Attorneys General Rex M. Burlison and Erwin O.
Switzer, III, states the following:

INTRODUCTION

1. Defendant Nextel West Corp. (“Nextel”) is engaged in deceptive conduct by the way it categorizes and describes a fee it has started charging its customers. Nextel has added a line item to its bills for “Federal Programs Cost Recovery” and has placed it under the heading “Taxes, Fees and Assessments” despite the fact that the fee Nextel is charging is neither a tax nor mandated.

2. Defendant Sprint Spectrum, L.P. (collectively, “Sprint”), directly or through affiliates, is including a line item in its invoices labeled “USA Regulatory Obligations & Fees.” Sprint placed this line item under the category “Other Surcharges and Fees,” which is placed after a list of taxes under the heading “Taxes and Regulatory Charges.” Sprint uses the phrase “USA Regulatory Obligations & Fees” even though the fee is not a tax or mandated, and there is no federal regulation obligating Sprint to impose this fee. In at least one part of its invoice Sprint shows a dollar amount that is the sum of the “USA Regulatory Obligations & Fees” amount plus actual taxes, and is group listed under the heading “Taxes/Surcharges/Regulatory.”

3. The Nextel and Sprint fees are in fact a way of passing on overhead costs outside of the Nextel and Sprint rate structures. By using the deceptive description and categorization, consumers have been misled to believe that the fee being imposed by Nextel or Sprint is a tax and/or is mandated, and consumers have been further led to believe that the imposition of this fee does not trigger the consumer’s right to terminate a

contract with Nextel or Sprint. Plaintiff is not challenging the rate of Nextel or Sprint or the act of imposing the charge in question. Plaintiff is challenging defendants' marketing, advertising, and communicating the charge, which Nextel and Sprint are doing in a deceptive way.

PARTIES

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to his common law, constitutional, and statutory authority, including but not limited to Chapters 27 and 407 of the Missouri Revised Statutes (as amended), and regulations promulgated thereunder.¹ Rex M. Burlison and Erwin O. Switzer, III, are duly appointed and qualified Assistant Attorneys General.

5. Defendant Nextel West Corp. is a Delaware corporation registered to do business in the State of Missouri, and doing business in the State of Missouri under the name "Nextel."

6. Sprint Spectrum L.P. is a Delaware Limited Partnership registered to do business in the State of Missouri, and doing business in the State of Missouri under the names "Sprint" and "Sprint PCS."

¹Unless otherwise indicated, all statutory references are to Missouri Revised Statutes (2000), as presently amended.

JURISDICTION AND VENUE

7. Section 407.100.1-3 provides:

1. Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices or solicitations or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from this state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

8. This Court has jurisdiction over the subject matter of this action pursuant to Chapters 27 and 407 of the Missouri Revised Statutes (as amended), and Article V of the Missouri Constitution.

9. This Court has personal jurisdiction over Nextel because it has registered to do business in the State of Missouri and does business in the State of Missouri.

10. Venue lies in the Circuit Court of City of St. Louis in that the violations of the Missouri Merchandising Practices Act described herein occurred, among other places, in the City of St. Louis in the State of Missouri. Mo. Rev. Stat. § 407.100.7

THE MISSOURI MERCHANDISING PRACTICES ACT

11. Section 407.020 provides, in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

* * *

Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

12. Section 407.010(6) defines “sale” as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.”

13. Section 407.010(1) defines “advertisement” as “the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.”

14. Section 407.010(4) defines “merchandise” as any “objects, wares, goods, commodities, intangibles, real estate or services.”

15. Section 407.010(7) defines “trade” or “commerce” as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms ‘trade’ and ‘commerce’ include any trade or commerce directly or indirectly affecting the people of this state.”

DEFENDANTS’ TRADE PRACTICES

COUNT I

Nextel

16. Plaintiff hereby repleads, restates, realleges and incorporates by reference all the allegations contained in the preceding paragraphs, as though fully set forth herein.

17. Defendant Nextel provides and sells cellular telephone service in various parts of the United States, including Missouri, which is the “sale” of “merchandise” in “trade or commerce,” as those terms are defined in the Missouri Merchandising Practices Act.

18. Beginning in January 2002, Nextel added a line item to its invoices to consumers labeled “Federal Programs Cost Recovery.”

19. The amount Nextel charged for the “Federal Programs Cost Recovery” was 55 cents per month, per invoices sent to its customers, from January through September 2002. Nextel increased the charge to \$1.55 in October 2002.

20. Nextel listed and continues to list the “Federal Programs Cost Recovery” charge under “Unit Taxes, Fees and Assessments” on the invoices.

21. On information and belief, the other items Nextel lists under “Unit Taxes, Fees and Assessments” are either taxes or specific fees based on a formula created by a governmental agency tied to a percentage of the customer’s bill.

22. Nextel’s “Federal Programs Cost Recovery” is neither a tax nor mandated by any governmental agency.

23. Nextel’s “Federal Programs Cost Recovery” is not tied to any formula, (such as a percentage of the consumer’s bill), established by any federal program or other governmental requirement.

24. On information and belief, Nextel claims that the “Federal Programs Cost Recovery” is related to its overhead costs associated with complying with certain federal regulations pertaining to emergency 911 service.

25. Neither Nextel nor, on information and belief, any other cellular telephone company has ever set out a line item on its invoices for costs of complying with other regulations, that cause Nextel to spend money to comply with the regulation, such as tax, environmental, or occupational and safety regulations.

26. In Nextel’s advertisements for cellular telephone service that are published in and targeted to Missouri consumers, Nextel has used the term “Federal Programs Cost

Recovery” and grouped it with taxes or other mandated fees in a description of “additional charges.”

27. Nextel’s advertisements have not stated that the “Federal Programs Cost Recovery” fee is set by Nextel, unlike the other fees or taxes in its “additional charges” paragraph in Nextel advertisements.

28. Because Nextel’s description of its additional charge as “Federal Programs Cost Recovery,” consumers are misled into believing that all cellular telephone companies would be required to impose such a charge, rather than including those overhead costs with other overhead costs in its rate structure.

29. Many Nextel consumers are required to sign contracts for one or two years that include a penalty if the customer terminates the contract early.

30. When Nextel unilaterally raises fees consumers can terminate the contract with Nextel without penalty.

31. Nextel has not stated in its invoices or advertisements that the “Federal Programs Cost Recovery” fee is actually a rate increase, that is set out as a flat fee, in addition to the monthly fee featured in advertisements and marketing material.

32. Reasonable consumers would be deceived into believing that the imposition of the fee would not lead to a right to terminate the contract without penalty because Nextel’s description and categorization make the fee appear to be a tax or mandated fee, which would not trigger a right to terminate without penalty.

33. Defendant Nextel's conduct described above is the act, use, and employment of deception and unfair practice, and the concealment, suppression, and omission of material facts to induce consumers to subscribe to Nextel or to refrain from cancelling their subscriptions with Nextel.

COUNT II
Sprint

34. Plaintiff hereby repleads, restates, realleges and incorporates by reference all the allegations contained in the preceding paragraphs, as though fully set forth herein.

35. Defendant Sprint provides and sells cellular telephone service in various parts of the United States, including Missouri, which is the "sale" of "merchandise" in "trade or commerce," as those terms are defined in the Missouri Merchandising Practices Act.

36. During the year 2002, Sprint has included a line item in its invoices to consumers labeled "USA Regulatory Obligations & Fees."

37. The amount Sprint charges or charged for the "USA Regulatory Obligations & Fees" was not disclosed to consumers but is, apparently, based on a percentage of the bill.

38. Sprint listed and continues to list the "USA Regulatory Obligations & Fees" charge under "Other Surcharges and Fees", listed directly below "Taxes and Regulatory Related Charges" on the invoices.

39. On information and belief, the other items Sprint lists under “Taxes and Regulatory Related Charges” are either taxes or specific fees based on a formula created by a governmental agency tied to a percentage of the customer’s bill.

40. Sprint’s “USA Regulatory Obligations & Fees” is neither a tax nor mandated by any governmental agency. Sprint is not obligated to impose the charge even though Sprint uses the word “Obligations” in the description.

41. Sprint’s “USA Regulatory Obligations & Fees” charge is not tied to any formula, such as a percentage of the consumer’s bill, established by any federal program or other governmental requirement.

42. On information and belief, Sprint claims that the “Federal Programs Cost Recovery” is related to its overhead costs associated with complying with certain federal regulations pertaining to emergency 911 service.

43. Neither Sprint nor, on information and belief, any other cellular telephone company has ever set out a line item on its invoices for costs of complying with other regulations, that cause Sprint to spend money to comply with the regulation, such as tax, environmental, or occupational and safety regulations.

44. In Sprint’s advertisements for cellular telephone service that are published in and targeted to Missouri consumers, Sprint has used the term “USA Regulatory Obligations & Fees.”

45. Sprint's advertisements have not stated that the "USA Regulatory Obligations & Fees" charge is set by Sprint, unlike the other items that are found under the heading "Detail of Taxes, Regulatory and Other Surcharges and Fees."

46. Because Sprint's description of its additional charge as "USA Regulatory Obligations & Fees," consumers are misled into believing that all cellular telephone companies would be required to impose such a charge, rather than including those overhead costs with other overhead costs in its rate structure.

47. Some Sprint consumers are required to sign contracts for one or two years that include a penalty if the customer terminates the contract early.

48. When Sprint unilaterally raises fees consumers can terminate the contract with Sprint without penalty.

49. Sprint has not stated in its invoices or advertisements that the "USA Regulatory Obligations & Fees" fee is actually a rate increase, that is set out as a flat fee, in addition to the monthly fee featured in advertisements and marketing material.

50. Reasonable consumers would be deceived into believing that the imposition of the fee would not lead to a right to terminate the contract without penalty because Sprint's description and categorization made the fee appear to be a tax or mandated fee, which would not trigger a right to terminate without penalty.

51. Defendant Sprint's conduct described above is the act, use, and employment of deception and unfair practice, and the concealment, suppression, and omission of

material facts to induce consumers to subscribe to Sprint or to refrain from cancelling their subscriptions with Sprint.

RELIEF

WHEREFORE, Plaintiff respectfully asks this Court enter a judgment against Defendants Nextel and Sprint providing at least the following forms of relief:

- A. Finding that Defendants Nextel and Sprint violated the provisions of Section 407.020 *et seq.* of the Missouri Revised Statutes;
- B. Permanently enjoining, pursuant to Section 407.100, Defendants Nextel and Sprint and their employees, agents, successors, assignees, and all other persons acting in concert or participation with each of them, from engaging in unlawful merchandising practices, including prohibiting Nextel and Sprint from failing to fully and fairly disclose the nature of the “Federal Programs Cost Recovery” fee “USA Regulatory Obligations & Fees” charges if they choose to impose such a fee, and from failing to disclose to customers under contract that the imposition of the “Federal Programs Cost Recovery” fee or the “USA Regulatory Obligations & Fees” charge gives customers the right to terminate their contracts with Defendant Nextel or Sprint.
- C. An Order requiring Defendants Nextel and Sprint to pay civil penalties, as provided for by Section 407.100.6;

D. An Order requiring Defendants Nextel and Sprint to pay to Plaintiff an amount equal to the costs of investigation and prosecution of this action, as provided for by Section 407.130;

E. An Order requiring Defendants Nextel and Sprint to pay all court costs incurred in this cause of action, as provided for by Section 407.130;

F. Any and all such additional and further orders as this Court deems just or otherwise appropriate, but not relief in the form of regulating the rates charged by Nextel or Sprint.

JEREMIAH W. (JAY) NIXON
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